

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION EIGHT

NASSIR MOHABER et al.,

Plaintiffs and Appellants,

v.

FARHAD ZOMORODI,

Defendant and Respondent.

B213945

(Los Angeles County
Super. Ct. No. BC344697)

APPEAL from a judgment of the Superior Court of Los Angeles County.
William F. Fahey, Judge. Affirmed.

Schuler & Brown, Jack M. Schuler and Sam D. Ekizian for Plaintiffs and
Appellants.

Paul Kujawsky for Defendant and Respondent.

Nassir Mohaber¹ appeals from the trial court's confirmation of an arbitration award. We affirm.

FACTS

Nassir Mohaber and Farhad Zomorodi, childhood friends, had been partners in various real estate ventures for over a decade when their relationship soured. After Mohaber sued Zomorodi, the parties entered into a settlement agreement on June 19, 2007, mediated by Steven Mehta.² Paragraph 1 of the settlement agreement specified that:

“The Pomona Property will be immediately sold, to the highest offer with only the usual and customary contingencies and inspections. The offer price shall be at or above the appraised value. If the property is not sold within 6 months of the date of this agreement, then the property can be sold at the best price attainable, with the same contingencies as above. If either party wants to accept an offer that meets the criteria above, then he shall give written notice of intent to accept, the offer shall be deemed approved for acceptance within 10 days of the offer unless another offer is received by broker that meets the above criteria and is at a higher price with the same or better terms. The competing offer must be accompanied with proof of the potential buyer's reasonable documentation of ability to obtain qualification for loan.”

Handwritten revisions to this paragraph (which are incorporated into the quotation above) were initialed by the parties. The settlement agreement further specified that “[a]ny dispute or controversy arising from, or in any way relating to paragraphs 1, 2, 3, 8, 15, 17, 18 & 19 [of] this Agreement shall be resolved by Steve Mehta. In the event of a breach of any of the terms and conditions of this Agreement, the prevailing Party shall be

¹ The appellants in this case are Nassir Mohaber and various members of his family—Jamshid Mohaber, Moussa Mohaber, Massoud Mohaber and Sophia Mohaber. For ease of reference, we will refer to all of the appellants as “Mohaber” and to individual appellants by their first and last names.

² The settlement agreement is signed by Nassir Mohaber, Jamshid Mohaber and Moussa Mohaber but not Sophia Mohaber and Massoud Mohaber. However, all of the Mohabers signed a power of attorney granting Nassir Mohaber “full, final and complete authority” to accomplish a settlement on their behalf.

entitled to all reasonable attorneys' fees and costs incurred. Provided, however, that the arbitrator shall not have the power to modify the terms of this agreement."

On August 7, 2007, Quest Academy made an offer to buy the Pomona property. Under the offer, Quest would waive the loan contingency and deposit \$25,000 into escrow. No other offers were made on the Pomona property. Zomorodi expressed his intent to accept the offer but Mohaber did not think Quest could get financing and refused to sign the offer. The matter was submitted to arbitration pursuant to paragraph 1 of the settlement agreement. A hearing on the matter was held on August 28, 2007. The arbitrator was Steven Mehta as specified under paragraph 16 of the settlement agreement. Mehta ruled that Quest's offer was bona fide and ordered that the offer be deemed accepted and for escrow to open immediately. Mehta also ordered Mohaber to sign the offer by September 12, 2007. On September 12, 2007, however, Mohaber's attorney sent an email to Zomorodi's counsel stating that Mohaber would not sign the Quest offer because he wanted to buy the property himself. Quest withdrew its offer sometime in September 2007.

The parties continued to battle over various issues, including access to the properties and discovery on the Quest offer. On March 19, 2008, Mehta ruled that the parties could not engage in formal discovery because the parties never expressly agreed to it. The parties signed a formal arbitration agreement on June 16, 2008, which named Mehta as the arbitrator and provided that it would be binding. In a two-day hearing, the parties presented witness testimony and other evidence on various issues, including whether Mohaber breached the terms of the settlement agreement when he refused to accept the Quest offer.

Noting that it was "one of the most ferocious and heated disputes between partners [he had seen] in his years in practice[.]" Mehta presented a 29-page decision to the parties on July 18, 2008. Among other things, he found that Mohaber's inexcusable refusal to sign the offer by Quest "smacks of self-dealing and possible breaches of duties owed to a partner" because "it appears to be part of a pattern of conduct intended to acquire the property for himself[.]" Mehta, however, noted that "[t]he evidence presented by Lois

Smith, the owner of Quest, shows that she has had numerous judgments and also owed an outstanding debt to the S.B.A. for a prior defaulted loan. Further, the loan consultant for the S.B.A. loan, Chris Woodard, also stated that he sent a denial letter to Quest, indicating that he was denying their loan application. [Footnote omitted.] On the other hand, the Quest offer on its face does not have a loan contingency.” Mehta continued, “The difficulty in this case is that had Mr. Mohaber signed the agreement as required by the settlement and as ordered, we would be able to find out whether Quest would have been able to close the escrow.” Rejecting Zomorodi’s suggestions to impose damages equal to half the purchase price offered by Quest or order Mohaber to purchase the property on the same terms as the Quest offer, Mehta imposed damages as follows:

“One thing that is obvious is that there was a \$25,000 deposit which would have been provided had escrow been opened. This amount would have been non-refundable if Quest was unable to obtain financing because of the NO Loan Contingency provision in paragraph 2L of the purchase agreement. As such, had Mohaber done what was ordered, there would have been a deposit of \$25,000 that would have been recoverable. As such it is ordered that Mohaber will pay \$25,000 to Zomorodi. Such amount will be secured by a lien against any proceeds from the sale of the Pomona property and paid out of escrow.

“In addition, it is also obvious that Zomorodi has been deprived the use of any proceeds from a sale had Mohaber cooperated in the sale process. As such, Zomorodi is entitled to recover from Mohaber pre-judgment interest at the legal rate of interest not to exceed 10% based on the actual amount of his share of the proceeds from the sale of the Pomona Property once the property does in fact sell. The pre-judgment interest will start to commence from September 13, 2007. . . .

“Given the intentional nature of such conduct, it is also ordered that Mohaber pay an additional \$25,000 in punitive damages to Zomorodi. Such amount shall be secured by a lien against any proceeds of a sale of the Pomona Property and paid out of escrow. The conduct of Mohaber was at best malicious and was calculated to intentionally harm Zomorodi and to force Zomorodi to sell to Mohaber. The evidence was also sufficiently proven to meet the standard for punitive damages. Such action cannot be condoned. Arbitrators are allowed to provide for punitive damages and equitable remedies in circumstances such as these where the remedy is extremely difficult to ascertain and the dispute between the parties has been presented to the arbitrator. [*see Rifkind & Sterling, Inc. v. Rifkind* (1994) 28 Cal.App.4th 1282, 1288-1289].”

Mehta further ordered Mohaber to pay Zomorodi's "attorneys fees and costs in seeking to enforce the terms of the settlement agreement and in having to present the claims in this arbitration" as well as the costs of the arbitrator and "any additional costs and fees associated with the attorney fee and cost motion[.]"

Not surprisingly, Mohaber filed a motion to vacate the arbitration award on October 10, 2008. After considering the moving papers and oral arguments, the trial court denied the motion to vacate on November 10, 2008.

"The relevant timeline and facts appear to the court to be the following: that the settlement agreement was executed on June 19 of 2007, and in paragraph 16, despite the edits, there's still a reference to an arbitrator, within about two months, on August 27 of '07, plaintiff's former attorneys penned a letter, referring to Mr. Mehta . . . as the arbitrator. Three days later Mr. Mehta made his first award of arbitrator in reference to the Quest offer to buy certain of the real estate at issue in the case.

"Thereafter, there was no objection by plaintiffs, the moving parties, and/or their former lawyer to that award or to a characterization that it was by the arbitrator. And in fact, through September 18, 2008, Mr. Mehta made numerous awards and orders by arbitrator without objection by plaintiffs.

"Also relevant to the court's consideration is the execution by the Plaintiffs' moving parties on June 16, '08, to another arbitration agreement. It appears only when new counsel came in did plaintiffs seek to deny that there was an arbitration, that there was an arbitrator, and it does appear to this court that the principles of waiver and unclean hands, as well as no legal error by Mr. Mehta all are applicable here."

Judgment was entered December 1, 2008, confirming the arbitration award and providing Zomorodi with "a personal judgment against Nassir Mohaber in the amount of \$114,408.42 plus interest thereon at 10% per annum from October 3, 2008 in the sum of \$1,818." Mohaber appealed February 2, 2009.

DISCUSSION

Arbitration awards in California are subject to very narrow judicial review; section 1286.2 of the Code of Civil Procedure³ outlines the limited circumstances under which an arbitration award may be vacated.⁴ (*A.M. Classic Construction, Inc. v. Tri-Build Development Co.* (1999) 70 Cal.App.4th 1470, 1474-1475.) We review the trial court's order confirming the arbitration award de novo. However, we apply the substantial evidence test to the trial court's ruling to the extent it rests upon a determination of disputed factual issues. (*SWAB Financial, LLC v. E*Trade Securities LLC* (2007) 150 Cal.App.4th 1181, 1197.)

³ All further section references are to the Code of Civil Procedure unless otherwise specified.

⁴ It provides:

“(a) Subject to Section 1286.4, the court shall vacate the award if the court determines any of the following:

- (1) The award was procured by corruption, fraud or other undue means.
- (2) There was corruption in any of the arbitrators.
- (3) The rights of the party were substantially prejudiced by misconduct of a neutral arbitrator.
- (4) The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted.
- (5) The rights of the party were substantially prejudiced by the refusal of the arbitrators to postpone the hearing upon sufficient cause being shown therefor or by the refusal of the arbitrators to hear evidence material to the controversy or by other conduct of the arbitrators contrary to the provisions of this title.
- (6) An arbitrator making the award either: (A) failed to disclose within the time required for disclosure a ground for disqualification of which the arbitrator was then aware; or (B) was subject to disqualification upon grounds specified in Section 1281.91 but failed upon receipt of timely demand to disqualify himself or herself as required by that provision. However, this subdivision does not apply to arbitration proceedings conducted under a collective bargaining agreement between employers and employees or between their respective representatives.

(b) Petitions to vacate an arbitration award pursuant to Section 1285 are subject to the provisions of Section 128.7.”

In this matter, Mohaber and his counsel attempt to circumvent the long-standing policy in California that favors upholding arbitration awards. It is unfortunate, but we note that in doing so, they often simply ignore facts and law that are not in their favor.⁵

I. The Parties Agreed To Binding Arbitration

Mohaber's initial contention that Mehta improperly compelled him to participate in binding arbitration lacks any basis in the facts or the law. The record shows, as described by the trial court, that: (1) Mohaber signed a settlement agreement which allowed Mehta to resolve all disputes arising from the sale of the Pomona property; (2) Mohaber and his counsel participated in various hearings before Mehta without objection; and (3) Mohaber signed a second arbitration agreement that expressly submitted the parties to binding arbitration and appointed Mehta to be the arbitrator.

"[P]arties to a private arbitration impliedly agree that the arbitrator's decision will be both binding and final." (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 9, fn. omitted.) Here, Mohaber fails to point to any facts in the record to contradict a finding that the parties agreed to binding arbitration. Indeed, the June 16, 2008 arbitration agreement expressly stated that "the arbitrator's decision is binding and final and there is no appeal from such decision." Having agreed to submit to arbitration and willingly participated in it, Mohaber cannot now claim that he never agreed to binding arbitration simply because he dislikes the arbitrator's decision. (*University of San Francisco Faculty Assn. v. University of San Francisco* (1983) 142 Cal.App.3d 942, 954.)

Nassir Mohaber's insistence that the Power of Attorney did not grant him the power to bind his family to arbitration is directly contradicted by the facts. First, Nassir, Massoud and Jamshid Mohaber signed the settlement agreement along with their attorneys. Second, Nassir and Jamshid Mohaber signed the June 16, 2008 arbitration agreement. Third, all of the Mohabers signed a power of attorney granting Nassir

⁵ For example, nowhere in his brief does Mohaber mention the June 2008 arbitration agreement. Such conduct is discouraged.

Mohaber authority to negotiate and sign a settlement agreement and “agree to be bound by any decision made by their Agent Nassir Mohaber” The broad language of the power of attorney allowed Nassir Mohaber to bind all of the Mohabers to arbitration as part of the settlement of the matter.

Further, there is no error in the trial court’s finding that the parties submitted to binding arbitration. Unlike the plaintiffs in *Trabuco Highlands Community Assn. v. Head* (2002) 96 Cal.App.4th 1183, 1189, the case relied upon by Mohaber, the trial court here did not rely simply on the arbitrator’s word to find the parties submitted to binding arbitration. Instead, as described above, the trial court reviewed the parties’ actions and written agreements to reach that conclusion.

We also reject Mohaber’s argument that paragraph 5 in the settlement agreement—providing that the “settlement may be enforced pursuant to California Code of Civil Procedure Section 664.6 in the Superior Court of Los Angeles County”—vests the trial court with the ultimate authority to resolve disputes and enforce the settlement agreement. The language Mohaber cites merely allows the settlement to become enforceable as a judgment. It does not, however, divest Mehta of his authority to act as an arbitrator under paragraph 16. Neither do we give any credence to Mohaber’s argument that by “naming himself as the arbitrator at a rate of \$450 an hour[,]” Mehta improperly modified the terms of the settlement. The terms of the agreements are clear—it was the parties who expressly appointed Mehta arbitrator under paragraph 16 of the settlement agreement and under the June 16, 2008 arbitration agreement.

II. Mohaber’s Rights Were Not Prejudiced by the Arbitrator’s Denial of Formal Discovery

Mohaber next contests the arbitration award on the ground that his rights were substantially prejudiced because Mehta refused to allow formal discovery. According to Mohaber, “[d]iscovery was essential to verify that, among other things, that the offer from Quest and Lois Smith was not a valid or viable offer, in that, she did not have the financial ability to close escrow.” Mohaber also contends his rights were substantially

prejudiced because the arbitrator refused to hear any evidence about whether his offer was better than Quest's.

While this appears to be a thinly-veiled run around the rule prohibiting judicial review of an arbitrator's decision making, insofar as it contends that his rights were substantially prejudiced, we briefly address it here. The record reflects the arbitrator considered a request for discovery and properly denied it. Unquestionably, "discovery is limited in arbitrations (except in injury or death cases or where the parties have expressly agreed otherwise). [Citations.]" (*Coast Plaza Doctors Hospital v. Blue Cross of California* (2000) 83 Cal.App.4th 677, 690, fn. 9; § 1283.1, subd. (b).) As the arbitrator found, none of the exceptions to the limited discovery rule apply here and the parties did not expressly agree to grant discovery.

In any event, Mohaber ignores Mehta's extensive discussion of the evidence that was in fact presented showing Quest's likely difficulty in obtaining financing. It is obvious that Mehta did consider the evidence Mohaber claims he was not allowed to present. The record also belies his contention that evidence about his own offer was not considered; Mehta's ruling expressly discusses evidence presented about Mohaber's offer to purchase the property. His rights were not prejudiced.

III. Mehta Did Not Deny a Continuance Before the Arbitration Hearing

Mohaber next argues the arbitrator erred by refusing to grant him a continuance "so they could procure and present testimony regarding the inability of the proposed buyer to consummate the transaction" Mohaber frames this issue as though he was denied a continuance *of the arbitration hearing*. This simply is not the case. The continuance he points to as being improperly denied was made before *a hearing on attorney's fees after the arbitration was completed*. The arbitrator's findings shed light on what actually took place:

"A hearing occurred on June 16, 2008 for purposes of conducting the arbitration of the issues. On or about July 22, 2008, the arbitrator made its decision and ordered that Zomorodi was the prevailing party and that Zomorodi file a motion for attorney's fees if he wanted to recover attorney's fees, among other things. Zomorodi filed said motion on August 11, 2008. On August 14, the

arbitrator gave notice to all parties through their counsel of record (and to Mohaber's new counsel) that the hearing was set on September 18, 2008 and the briefing schedule. [fn omitted.] In addition, on August 27, 2008, counsel was provided notice again of the hearing date and the need to pay the arbitration fees for the hearing. Thereafter, Zomorodi paid the entire arbitration fees in order to ensure that the hearing would take place.

"On September 17, 2008, the eve before the hearing, Mr. Hoffman, counsel for Mohaber, for the first time informed the parties and the arbitrator that he apparently had been sent out for jury duty. He requested a ten day continuance of the hearing on that ground. On the same date, counsel for Zomorodi objected to such a continuance. The continuance was denied.

"On September 18, 2008, the scheduled hearing took place. At that time, the arbitrator opted to provide the Mohabers with another opportunity to present any reason why they could not attend the hearing among other things and issued an order to show cause regarding various issues. As part of that Order to show cause, the Mohabers could present their arguments in their opposition (which had previously not been filed) and also present their response to the order to show cause."

Section 1286.2, subdivision (a)(5) allows for vacating an arbitration award where "[t]he rights of the part[ies] were substantially prejudiced by the refusal of the arbitrators to postpone the hearing upon sufficient cause being shown therefore. . . ." To begin with, Mohaber could not have presented testimony about the inability of the proposed buyer to consummate the transaction at the attorney's fees hearing. As a result, the prejudice he complains of simply does not exist. We also find it significant that Mohaber cites no authority for the proposition that subdivision (a)(5) even applies to a post-arbitration hearing motion for attorney's fees. We have not found any; and it appears this section deals with the denial of a continuance of the arbitration hearing itself, not a post-arbitration hearing motion for attorney's fees. (See, e.g. *SWAB Financial, LLC v. E*Trade Securities, LLC*, *supra*, 150 Cal.App.4th at p. 1185.) Even if the section does apply to post arbitration hearings, we find the continuance was properly denied and no substantial prejudice is apparent as Mehta provided Mohaber with an additional opportunity via the order to show cause to present further evidence at the attorney's fees hearing. (*Id.* at p. 1198.)

IV. Excess Award

Finally, Mohaber complains that Mehta exceeded the scope of his authority under the settlement agreement when he awarded Zomorodi the full \$25,000 deposit as he was only entitled to half of that sum and also when he awarded punitive damages because those were not at issue. However, Mohaber fails to explain how the settlement agreement or the June 16, 2008 arbitration agreement limited the damages that could be awarded in the arbitration. We find no legitimate basis, and Mohaber fails to point us to any, to vacate the damages award. (*See Moncharsh v. Heily & Blase, supra*, 3 Cal.4th at pp. 11-12.)

DISPOSITION

The judgment is affirmed. Respondent Zomorodi is to recover his costs on appeal from Mohaber.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BIGELOW, J.

We concur:

RUBIN, Acting P. J.

MOHR, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.